

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

THE CHEESECAKE FACTORY, INC. and
THE CHEESECAKE FACTORY
RESTAURANTS, INC.,

Defendant.

No. 2:16-cv-01942-JLR

~~PROPOSED~~ CONSENT
DECREE AND ORDER

JLR

I. INTRODUCTION

1. This action originated when Oleg Ivanov filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC" or "Commission"). Mr. Ivanov alleged that Defendants The Cheesecake Factory, Inc. and The Cheesecake Factory Restaurants, Inc. ("Defendants") discriminated against him in violation of Titles I and V of the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, 42 U.S.C. § 12101 *et. seq.*, ("ADA" and "ADAAA") when Defendants allegedly: (1) denied him a reasonable accommodation for his physical disability of deafness by not providing an American Sign Language ("ASL") interpreter or close captioned videos for orientation training or during disciplinary meetings ("reasonable accommodation"); (2) adversely affected the terms and conditions of his employment by disciplining him and firing him because of his physical disability ("disparate treatment"); and (3) fired him from his part-time dishwasher job at Defendants' Seattle, Washington restaurant in retaliation for his requesting a reasonable accommodation ("retaliation").

[PROPOSED] CONSENT DECREE AND ORDER - 1
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Davis Wright Tremaine LLP
LAW OFFICES
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3043
206.622.3150 main • 206.757.7700 fax

1 investigation and litigation, and Defendants' decision to enter this Consent Decree is not a
2 reflection of the merits of the claims alleged in the complaint.

3 III. MONETARY RELIEF

4 8. In settlement of this lawsuit, Defendants agrees to pay Mr. Ivanov the total gross
5 amount of fifteen thousand dollars (\$15,000). On the same day this Consent Decree is filed
6 with the Court, the EEOC shall inform Defendants in writing of Mr. Ivanov's mailing address
7 and provide an IRS Form W-9 completed by Mr. Ivanov. Within ten (10) days of the entry of
8 this Consent Decree, Defendants will deliver two settlement checks in the amounts set forth in
9 subsection (a) of this paragraph to Mr. Ivanov's mailing address by certified mail, return receipt
10 requested. Defendants will provide proof of delivery of the settlement checks to the EEOC
11 within ten (10) after the date on which delivery of those checks is complete. The two
12 settlement checks shall be made as follows:

13 a. Wages: Defendants will deliver Mr. Ivanov a check in the amount of five-
14 thousand-two-hundred-sixty-three dollars and fifty cents (\$5,263.50) representing alleged lost
15 wages (approximately five months back pay), with interest. The check shall be reduced by any
16 applicable deductions for the employee's portion of FICA and by applicable federal and state
17 income tax withholdings related to the payment of employees' wages. Defendants shall include
18 a statement of payments and deductions.

19 b. Compensatory Damages: Defendants will deliver Mr. Ivanov a check in the
20 amount of nine-thousand-seven-hundred-thirty-six dollars and fifty cents (\$9,736.50)
21 representing alleged compensatory damages. Defendants will issue Mr. Ivanov an IRS Form
22 1099 for this payment.

23 c. Defendants will not condition the receipt of monetary relief on Mr. Ivanov's
24 agreement to: (a) maintain as confidential the facts and/or allegations underlying his charge and
25 complaint and the terms of this Decree; (b) waive his statutory right to file a future charge with
26 any government agency; (c) agree to a non-disparagement and/or confidentiality agreement; or
27

(d) release any claims beyond the ADA/ADAAA claims at issue in this action and which this Consent Decree resolves.

IV. INJUNCTIVE AND OTHER RELIEF

A. General Provisions

9. Defendants' agents, General Manager, managers, and assistant managers who work at Defendants' Seattle, Washington restaurant located at 700 Pike St, Seattle, WA 98109 (the "Restaurant"), and all human resource department staff members who provide advice and assistance to the foregoing individuals are enjoined from engaging in practices which constitute discrimination based on any applicant's or employee's disability, and/or which constitute retaliation against any individual for engaging in protected activity including requesting a reasonable accommodation.

10. Defendants shall institute the policies and procedures set forth below at the Restaurant.

B. Anti-Discrimination Policies and Procedures

11. Defendants shall review written anti-discrimination policies, procedures and training for all management personnel and employees and revise where appropriate.

12. Defendants agree to provide written notice informing their employees and managers about the requirements of the ADA/ADAAA and instructions on how to request an accommodation. Not later than one-hundred-and-twenty (120) days after entry of this Consent Decree, Defendants will confirm that they have: (1) distributed a written copy of the anti-discrimination policies to their managers, and employees; and (2) provided written notice to its managers and employees of instructions on how to request a reasonable accommodation, where they believe one is required or necessary.

13. Not later than one-hundred-and-twenty (120) days after entry of this Consent Decree, Defendants will ensure that the following training and orientation videos are equipped with closed captioning: (a) Orientation/Culture, (b) Food Safety, (c) Workplace Safety and (d) TRAC – Tip Reporting Alternative Commitment.

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3 C. Equal Employment Opportunity Training

4 14. Defendants shall provide a one-hour EEO training seminar by an independent
5 EEO consultant to managers at the Restaurant and the Staff Relations Manager for the Seattle
6 Restaurant regarding the ADA/ADAAA. This anti-discrimination training shall include, at a
7 minimum, a discussion of federal law prohibiting discrimination against any applicant or
8 employee with a disability, and a review of Defendants' EEO policies and procedures on
9 disability discrimination including reasonable accommodations under the ADA. The training
10 shall be aimed at helping attendees understand how to identify and prevent disability
11 discrimination and retaliation, and how to engage in the interactive process and evaluate
12 specific requests for workplace accommodations on the basis of a disability. Defendants shall
13 ensure that the training is developed and administered by instructors with expertise in anti-
14 harassment and anti-discrimination matters. Training materials must be submitted to the EEOC
15 at least thirty (30) days prior to the training session. Within fourteen (14) days of receipt, the
16 EEOC will advise Defendants of any comments. The EEOC agrees to review the proposed
17 policies and procedures in good faith, and will not attempt to require Defendants to include
18 training beyond the minimum threshold stated in this paragraph.

19 15. All costs of training shall be borne by Defendants. Defendants shall ensure that
20 participants sign attendance sheets to certify receipt of training, which it will retain during the
21 duration of this Consent Decree.

22 16. Defendants shall notify the EEOC in writing of the completion of the training
23 seminar and shall specify the names and job titles of the personnel who participated in and
24 completed the training. This information shall be provided as part of the report discussed in
25 Paragraphs 21-23 of this Consent Decree.

26 D. Employee Records and Employment Reference
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1 17. Defendants shall provide a neutral job reference for Mr. Ivanov when asked by
2 any prospective employer by directing any potential employer to call "The Work Number."

3 18. Defendants shall not disclose any information about or refer to Mr. Ivanov's
4 charge of discrimination in responding to employment reference requests or other information
5 requests about Mr. Ivanov, unless required to do so by law.

6 19. Defendants hereby certify that the personnel file of Mr. Ivanov does not contain
7 any reference to any charge of discrimination against Defendants or this lawsuit.

8 F. Policies Designed to Promote Accountability

9 20. Defendants agree that it shall advise all managers at the Restaurant in writing
10 within ten (10) days of the entry of the Consent Decree of their duty to ensure compliance with
11 anti-discrimination laws and the Company's EEO policies and procedures. Defendants will
12 notify those managers that violations of the companies' antidiscrimination policies shall result
13 in appropriate discipline up to and including termination. In addition, Defendants will inform
14 those managers of their obligation to report, prevent and correct any discrimination, harassment
15 or retaliation they observe or become aware of in the workplace.

16 G. Reporting

17 21. Defendants shall submit an annual report (the "Report") to the Seattle Field
18 Office of the EEOC for a period of two (2) years, thirty (30) days prior to the end of each
19 calendar year from the date of the entry of this Consent Decree.

20 22. The report shall contain the following information and attachments:

21 a. Certification that Defendants have:

- 22 1. Maintained their written EEO policies and procedures and distributed
23 copies of their EEO policy as described in Paragraph 12;
- 24 2. Complied with the training provisions enumerated in Paragraphs 14-16
25 of this Consent Decree,
- 26 3. Complied with the provision of Paragraph 20 of this Consent Decree;
- 27 4. Complied with all other provisions of this Consent Decree.

b. Copies of the following documents shall be included with the Report:

1. A copy of the Company's EEO policy and procedures developed and implemented in accordance with the provisions of this Consent Decree;
2. A sign-in sheet or list of the names and job titles of Defendants' personnel who completed EEO training in connection with this Consent Decree and the dates the training were conducted.

23. If applicable, Defendants shall submit a statement with the Report to the EEOC specifying the areas of noncompliance, the reason for the noncompliance, and the steps that were or shall be taken to bring Defendants into compliance.

H. Posting

24. Defendants shall post a Notice to All Employees. This Notice is attached as Exhibit A to this Consent Decree. The Notice shall be posted on a centrally located bulletin board at the Restaurant for the duration of the Consent Decree.

VI. ENFORCEMENT

25. If the EEOC determines that Defendants have not complied with the terms of this Consent Decree, the EEOC shall provide written notification of the alleged breach to Defendants. The EEOC shall not petition the Court for enforcement of this Consent Decree for at least twenty (20) days after providing written notification of the alleged breach. The 20-day period following the written notice shall be used by the EEOC and Defendants for good faith efforts to resolve the dispute.

VII. RETENTION OF JURISDICTION

26. The United States District Court for the Western District of Washington at Seattle shall retain jurisdiction over this matter for the duration of this Consent Decree.

VIII. DURATION AND TERMINATION

27. This Consent Decree shall be in effect for two (2) years from the date of entry of the Decree. If the EEOC petitions the Court for breach of this Consent Decree, and the Court finds Defendants to be in violation of the terms of the Consent Decree, the Court may extend the duration of this Consent Decree.

Respectfully submitted this _____ day of _____, 2018.

ROBERTA L. STEELE
Regional Attorney

JAMES L. LEE
Deputy General Counsel

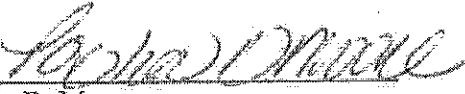
JOHN F. STANLEY
Supervisory Trial Attorney

GWENDOLYN Y. REAMS
Associate General Counsel

DAMIEN A. LEE
Senior Trial Attorney

BY: _____
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
909 First Avenue, Suite 400
Seattle, WA 98104-1061
Telephone (206) 220-6915
Facsimile (206) 220-6911
Attorneys for Plaintiff EEOC

Office of the General Counsel
131 "M" Street NE
Washington, D.C. 20507

BY: 
Portia R. Moore
Joseph P. Hoag
Joe Wonderly
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
Telephone (206) 757-8299
Attorneys for Defendants

Respectfully submitted this 31st day of January, 2018.

ROBERTA L. STEELE
Regional Attorney

JAMES L. LEE
Deputy General Counsel

JOHN F. STANLEY
Supervisory Trial Attorney

GWENDOLYN Y. REAMS
Associate General Counsel

DAMIEN A. LEE
Senior Trial Attorney

BY: Robert A. Steele
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

909 First Avenue, Suite 400
Seattle, WA 98104-1061
Telephone (206) 220-6915
Facsimile (206) 220-6911
Attorneys for Plaintiff EEOC

Office of the General Counsel
131 "M" Street NE
Washington, D.C. 20507

BY: Portia R. Moore
Portia R. Moore
Joseph P. Hoag
Joe Wonderly
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
Telephone (206) 757-8299
Attorneys for Defendants

~~PROPOSED~~ ORDER APPROVING CONSENT DECREE

The Court, having considered the foregoing stipulated agreement of the parties,
HEREBY ORDERS THAT the Consent Decree be, and the same hereby is, approved as the
final decree of this Court in full settlement of this action. This lawsuit is hereby dismissed with
prejudice and without costs or attorneys' fees. ^{As provided herein, the} ~~The~~ Court retains jurisdiction of this matter for
purposes of enforcing the Consent Decree approved herein.

DATED this 1ST day of Feb., 2018



THE HONORABLE JAMES L. ROBART